
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

DAVID R. PETE,

Plaintiff,

*versus*DOUG MCMILLON, KATHRYN
MCLAY, and DONNA MORRIS,

Defendants.

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CIVIL ACTION NO. 1:22-CV-00030

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On January 26, 2022, the court referred this case to the Honorable Zack Hawthorn, United States Magistrate Judge, for all pretrial matters under a standing order. The same day, *pro se* Plaintiff David R. Pete moved to proceed *in forma pauperis*. Doc. No. 2. On February 17, 2022, Judge Hawthorn granted Pete's motion but ordered him to amend his complaint to state a claim on which relief could be granted. Doc. No. 3. On February 24, 2022, Pete filed his *Amended Complaint* against three Walmart executives. Doc. No. 4. In his *Amended Complaint*, Pete alleged violations of his First and Fourteenth Amendment rights after an incident at a Walmart store in Beaumont, Texas. *See id.*

On March 2, 2022, Judge Hawthorn recommended that the court dismiss Pete's complaint *sua sponte* because Pete again failed to state a claim on which relief could be granted. Doc. No. 6. On March 15, 2022, Pete timely filed his *Objections* to the report. Doc. No. 8. On March 29, 2022, after reviewing Pete's objections, Judge Hawthorn withdrew the Report and Recommendation and gave Pete another chance to state a cognizable claim under either 42

U.S.C. § 1983 or § 1985(3). Doc. No. 9. In turn, on April 4, 2022, Pete filed his second *Amended Complaint*. Doc. No. 11. On April 26, 2022, Judge Hawthorn once again recommended that the court dismiss Pete’s complaint because he still had not stated a claim on which relief could be granted. Doc. No. 12. On May 5, 2022, Pete timely filed his *Objection to Second Report and Recommendation*. Doc. No. 14.

A party who files timely, written objections to a magistrate judge’s report and recommendation is entitled to a *de novo* determination of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2)-(3). The court has conducted a *de novo* review of Judge Hawthorn’s second Report and Recommendation and has carefully considered Pete’s objections. The court finds that Judge Hawthorn’s findings and conclusions of law are correct and that Pete’s objections are without merit. In general, Pete has launched only vague objections to Judge Hawthorn’s Report and Recommendation, and his specific objections are without factual support.

Pete objects generally to the court’s *sua sponte* dismissal power and objects that the court has not ordered process to be served upon the Defendants. Doc. No. 14 at 1-2. Title 28 of the United States Code § 1915(e)(2)(B) provides for *sua sponte* dismissal of a complaint filed *in forma pauperis* if the court determines *at any time* that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” *See* 28 U.S.C. § 1915(e)(2)(B) (emphasis added); *see also Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998). “At any time” includes before process is served. Accordingly, the court overrules these objections.

Further, Pete generally asserts that he has proven enough facts to state a claim to relief, argues that Judge Hawthorn erred by evaluating Pete’s likelihood of success, and claims that he

proved that the Defendants conspired with law enforcement. Pete has not provided factual support for these allegations, so the court agrees with Judge Hawthorn's finding that he has not stated a claim to relief.

It is therefore **ORDERED** that the Report and Recommendation of the Magistrate Judge (Doc. No. 12) is **ADOPTED**. The court will issue a Final Judgment separately.

SIGNED at Beaumont, Texas, this 19th day of May, 2022.

A handwritten signature in cursive script, reading "Marcia A. Crone", positioned above a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE